

FILED

APR 19 2013

IN THE UNITED STATES DISTRICT COURT U.S. District Court
District Of Montana
Missoula

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

UNITED STATES OF AMERICA,

Cause No. CR 03-28-BU-DWM
CV 13-24-BU-DWM

Plaintiff,

vs.

ORDER DENYING MOTION AND
DENYING CERTIFICATE OF
APPEALABILITY

JOHN MORGAN MEEKS,

Defendant.

On April 4, 2013, Defendant John Morgan Meeks submitted a document seeking a writ of habeas corpus, writ of error coram nobis, "Review of 'Direct Appeals'" and the first and second "'T.-28-U.S.C.A. § 2255' & Their Et. Al's." He also seeks counsel, reassignment of his case to a different judge, and a hearing. The document was filed as a motion to vacate, set aside, or correct his sentence. Meeks is a federal prisoner proceeding pro se.

The document can only be construed as a motion under 28 U.S.C. § 2255. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005); *Matus-Leva v. United States*, 287 F.3d 758, 761 (9th Cir. 2002); *United States v. Valdez-Pacheco*, 237 F.3d 1077, 1080 (9th

Cir. 2001). It is recharacterized as such.

Meeks filed his first § 2255 motion in this Court on March 29, 2007. The motion and a certificate of appealability were denied on April 4, 2008. *See* Mot. § 2255 (doc. 127); Order (doc. 141). Meeks appealed. The Court of Appeals denied a certificate of appealability on August 19, 2009. *United States v. Meeks*, No. 08-35325 (9th Cir. Aug. 19, 2009) (doc. 163). Meeks filed a second § 2255 motion on January 6, 2009. It was denied on January 9, 2009. Mot. § 2255 (doc. 146); Order (doc. 147).

Because Meeks has already litigated his first as well as a second § 2255 motion to completion, there is no requirement that he be given notice and an opportunity to respond before the motion is recharacterized. *Castro v. United States*, 540 U.S. 375, 377 (2003). Because the recharacterized motion is Meeks' third under § 2255, and because its filing was not preauthorized by the Court of Appeals, this Court lacks jurisdiction to consider it. 28 U.S.C. § 2255(h); *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam). Because dismissal is imperative, a certificate of appealability is not warranted. Because the motion is untimely, transfer to the Court of Appeals is not in the interest of justice. 28 U.S.C. §§ 1631, 2255(f).

Accordingly, IT IS HEREBY ORDERED:

1. Meeks' submission of April 4, 2013 (doc. 175), is recharacterized as a third motion under 28 U.S.C. § 2255.

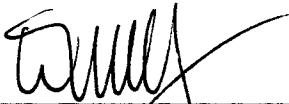
2. Meeks' third § 2255 motion is DISMISSED for lack of jurisdiction.

3. All other motions are DENIED AS MOOT.

4. A certificate of appealability is DENIED.

5. The Clerk of Court is directed to enter, by separate document, a judgment of dismissal in the civil case.

DATED this 18th day of April, 2013.



Donald W. Molloy
United States District Judge

